

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID DEMARCUS HAQQ,

Plaintiff,

v.

NATIONAL LODGE MOTEL; HIRAL  
PATEL,

Defendants.

No. C 10-5004 JSW (PR)

**ORDER OF DISMISSAL**

**INTRODUCTION**

Plaintiff, a California prisoner proceeding pro se, filed this civil rights complaint under 42 U.S.C. § 1983 against a motel in Oakland, California, and its front desk clerk. Plaintiff's application to proceed in forma pauperis is granted in a separate order. This Court now reviews the complaint pursuant to 28 U.S.C. § 1915A, and dismisses it for failure to state a cognizable claim for relief.

**STANDARD OF REVIEW**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." *Id.* § 1915A(b). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

1 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement  
 2 of the claim showing that the pleader is entitled to relief." "Specific facts are not  
 3 necessary; the statement need only "'give the defendant fair notice of what the . . . claim  
 4 is and the grounds upon which it rests.'"*Erickson v. Pardus*, 127 S. Ct. 2197, 2200  
 5 (2007) (citations omitted). Although in order to state a claim a complaint "does not need  
 6 detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his  
 7 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic  
 8 recitation of the elements of a cause of action will not do. . . . Factual allegations must  
 9 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*  
 10 *Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer  
 11 "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. Pro se  
 12 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,  
 13 699 (9th Cir. 1990).

14 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two  
 15 elements: (1) that a right secured by the Constitution or laws of the United States was  
 16 violated, and (2) that the alleged violation was committed by a person acting under the  
 17 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

## 18 LEGAL CLAIMS

19 Plaintiff alleges that the front desk clerk of the National Lodge Motel in Oakland,  
 20 California, have failed to provide correct evidence to the police in connection with  
 21 crimes charged against Plaintiff in state court.

22 A private individual or organization, such as the Defendants named here, do not  
 23 act under color of state law, an essential element of a Section 1983 action. *Gomez v.*  
 24 *Toledo*, 446 U.S. 635, 640 (1980). Private conduct, no matter how wrongful, is not  
 25 covered under Section 1983. *Ouzts v. Maryland Nat'l Ins. Co.*, 505 F.2d 547, 550 (9th  
 26 Cir. 1974). There is no right to be free from the infliction of constitutional deprivations  
 27 by private individuals. *Van Ort v. Estate of Stanewich*, 92 F.3d 831, 835 (9th Cir. 1996).  
 28 As the Defendants, a motel and its employee, are not state actors, Plaintiff's claims

1 against them are not cognizable under Section 1983 and will be dismissed.

2 **CONCLUSION**

3 This case is DISMISSED because the complaint fails to state a cognizable claim  
4 for relief.

5 The Clerk shall enter judgment and close the file.

6 IT IS SO ORDERED.

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8 DATED: November 30, 2010

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10 JEFFREY S. WHITE  
11 United States District Judge  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

DAVID DEMARCUS HAQQ,  
Plaintiff,

Case Number: CV10-05004 JSW

**CERTIFICATE OF SERVICE**

v.

NATIONAL LODGE MOTEL et al,  
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 30, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

David Demarcus Haqq  
San Quentin State Prison  
F43979  
San Quentin, CA 94972



Dated: November 30, 2010

Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk